IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.813 OF 2006
IN
SUIT NO.3366 OF 2005

S.J.Creado & others Plaintiffs

versus

Gerard D'Mello & others Defendants

Ms.Nita Mandhayan i/by Vasant Dhawan for D-1.

Mr.Kevic Setalwad with Mr.K.B.Purohit i/by Purohit & Purohit for plaintiffs.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th July 2006

PC :

1. This Chamber Summons was mentioned before me on the last occasion for two reliefs. Firstly, that the time for payment of Rs.55.00 lakh which has been stipulated in the consent decree i.e. 30th June 2006, be extended and the self operative consent terms should not take effect inasmuch as the Court Receiver who was to stand appointed in default of the flats more particularly mentioned in the consent decree, should not be appointed to take possession thereof so also sell them in execution of the

decree.

2. Ms.Mandhayan appears for the judgement debtor and submits that in pursuance of the oral statement made on the last occasion the judgement debtor has brought in Court pay orders worth Rs.10.00 lakh to show his bona fides. The same are drawn in favour of the advocate appearing for the plaintiff-decree holder.

3. Shri Setalwad appearing for the decree holder, upon instructions, states that this amount would be accepted under protest and without prejudice to the rights and contentions of the decree holder to execute the decree in terms of the order passed by this Court so also in accordance with law.

4. Today, Shri Setalwad brings to my notice that one of the flats namely 501 is covered by the consent decree. The consent decree is dated 21st December 2005. However, Flat No.501 has been sold under an Agreement of Sale dated 8th June 2005 which has now been registered on 20th April 2006. This conduct of the Judgement Debtor is in breach of the undertaking given to this Court and that he does not deserve any equitable and

discretionary relief. So also, the consent terms being self operative and the decree holder not consenting to any extension of time, this application is not maintainable. He has invited my attention to Section 148 of CPC and Order XX, Rule 11(2) thereof. My attention is also invited to a judgement of the Hon'ble Supreme Court reported in (1996)10-SCC-255 (Suvaran Rajaram Bandekar and others Vs. Narayan R. Bandekar and others).

5. On the other hand, Ms.Mandhayan submits that the building only requires some internal works and is otherwise complete. She submits that after having shown the bona fides and considering that the judgement debtor was ill, this Court should take a liberal view and extend the time. In any event, even if the consent order were to take effect, the Court Receiver should not proceed and take physical possession so also sell the flats in question.

6. After having perused the Judge's Order, the affidavit in support, the consent decree and the relevant provisions of the CPC, in my view, in the interest of justice, a chance deserves to be granted to the judgement debtor to show his bona

fides and make payment. The consent terms and decree passed in pursuance thereof contains a clause appointing Court Receiver if default is committed and empowering him to sell the subject flats. Therefore, the consequences are that now Receiver will step in. That would have serious consequences on the right of the flat purchasers as well. Therefore, the opportunity and chance prayed for is granted. Ultimately, the extension is in the larger interest of justice. However, such extension cannot be unconditional. A default having admittedly committed by the judgement debtor and the self operative order providing for Receiver to step in, the judgement debtor cannot insist that the property should be allowed to be dealt with by him without in any manner the Court Receiver interfering with the same.

7. In my view, considering that the civil construction is complete but internal plastering and internal works are still going on, in the rainy season, the judgement debtor can complete the same. However, the Court Receiver shall step in in respect of flats for taking only symbolical possession thereof. The Court Receiver shall not prevent the judgement debtor from completing the

abovementioned works till 31st December 2006. In the event the amount under the consent decree is not paid by 31st December 2006, then the Court Receiver shall proceed to take physical possession of these flats and sell them. It will be open for the Court Receiver to complete the incomplete works pertaining to these flats before selling them in the open market. The Court Receiver to then satisfy the decreetal claim from the sale proceeds first before handing over any surplus amount to the judgement debtor. If the Court Receiver takes possession as directed above, then it would be open for the decree holder to make appropriate application to claim any interest on the outstanding as of that date. That application shall be considered on its own merits and in accordance with law without being influenced by any observations made in the present order.

8. The judgement debtor can, before this date, pay all the amounts under the consent decree and thereupon apply to this Court for discharging the Court Receiver. Needless to state that till 31st December 2006 the judgement debtor shall not alienate, encumber, create third party rights or part with possession of Flat Nos.302 on the Third

Floor, 401 and 402 on the entire Fourth Floor and 501 on the Fifth Floor of the building constructed on land City Survey Nos.846, 846/1 and 846/2 at Village Marol, Andheri (East), Mumbai. However, this order does not prevent the judgement debtor from completing the works which are incomplete as of today pertaining to these flats. This order also does not prevent the judgement debtor from completing the other works pertaining to the building.

9. The Court Receiver is directed to take symbolic possession of these flats. The judgement debtor to deposit with the Court Receiver all original documents pertaining to these flats and in the event the same are required for any other purpose, he shall be at liberty to make such application as is permissible in law for releasing the same.

10. Judge’s Order is disposed of by directing that time specified in Clause-II of the consent decree dated 21st December 2005 shall stand extended to 31st December 2006 subject to the above conditions.

11. At this stage Shri Setalwad submits that by

clause-8 of the decree as also the terms based upon which the same is passed, the Receiver shall stand appointed not only of flats mentioned in the order but the entire property namely the building and the land. At that stage, the Court Receiver will have powers to complete the construction at site. Needless to state that whether there is any direction of this nature in these terms or not, is not an issue before me. What is the ambit and scope of the powers of the Court Receiver in law, will be considered at a subsequent stage and upon an application by the decree holder. Presently, this issue does not arise for my consideration because I am considering the request of judgement debtor for extension of time. Thus, the powers of Court Receiver is a matter which is kept open to be considered at a later stage. Court Receiver shall not put up his board on the flats/building or any portion of the building till 31st December 2006.

(S.C.DHARMADHIKARI, J.)